ment, but rather on the theory that the fourteenth amendment does not include the right to trial by jury. The authorities cited by the court in the principal case in support of the right to such trial are hardly in point ;[6] since those cases arose in federal jurisdictions where the fifth and sixth amendments applied ;[7] and these amendments have no application to prosecutions for crimes against a state.[8] On the other hand Justice Bradley, who in the slaughter-house cases carried the force of the fourteenth amendment further than any other member of the court, later said with reference to this amendment: "There is nothing in the constitution to prevent any state from adopting any system of laws or judicature it sees fit for its territories."[9] States should be allowed to do away with jury trial to-day as readily as they could before 1870. On this ground only, can the extension by statute of equity jurisdiction be supported. To limit states to the procedure then in vogue would make no allowance for progress in systems of judicature induced by new conditions. Nor does it seem right so to interpret the amendment as to sanction summary conviction in one state and to forbid it in another, merely because the one had allowed itself such jurisdiction before 1870, and the other had not. Any legal procedure in accord with the established usage in England and America and in conformity with the constitution and laws of the United States, or with its treaties, should be considered "due process of law."[10] Such an interpretation of "due process" is adopted by the Supreme Court in civil cases ;[11] and while this question has not been squarely raised in criminal cases, there seems no reason for holding that what is "due process" as to the former is not "due process" as to the latter, since the same safeguards are extended to "life, liberty, or property."

PART PERFORMANCE UNDER THE STATUTE OF FRAUDS. — It is well established that equity will not allow one party to an oral contract for the sale of land to set up the statute of frauds when the other party, in reliance on this contract, has partially performed.[1] In determining what acts constitute a sufficient part performance to take the case out of the statute, the English courts and the majority of the courts in this country seem to require only that the acts must be overt, and of such a nature that they may be unequivocally attributed to the existence of an oral agreement.[2] Under this rule the courts have held that mere entry by the purchaser under the oral contract was enough to take the case out of the statute,[3] while on the other hand a tenant in possession who made improvements on the premises relying on an agreement to extend his lease was denied specific performance because his acts, not being inconsistent with the original tenancy, could not be unequivocally attributed to the existence of the parol agreement.[4] Such

6 United States *v.* Johanssen, 35 Fed. Rep. 411 ; *In re* Mills, 135 U. S. 263 ; Callan *v.* Wilson, *supra.*

7 *In re* Sawyer, 124 U. S. 200 ; Eilenbecker *v.* Plymouth Co., 134 U. S. 31.

8 Brooks *v.* Missouri, 124 U. S. 397.

9 Missouri *v.* Lewis, 101 U. S. 22, 31.

10 Hurtado *v.* California, 110 U. S. 538 ; Lowe *v.* Kansas, 163 U. S. 81, 85.

11 Walker *v.* Sauvinet, 92 U. S. 90 ; see also Hallinger *v.* Davis, 146 U. S. 314.

1 Browne, Stat. of Frauds, ch. xix. ; Mundy *v.* Jolliffe, 5 Myl. & Cr. 167.

2 Maddison *v.* Alderson, L. R. 8 App. Cas. 467 ; Harris *v.* Knickerbacker, 5 Wend. (N. Y.) 638.

3 Pain *v.* Coombs, 1 De G. & J. 34.

4 Frame *v.* Dawson, 14 Ves. Jun. 385.

an arbitrary requirement can be based only on the notion that a court of equity will enforce a contract whenever it is sufficiently satisfied of its existence. Since, however, the statute of frauds expressly provides that all contracts for the sale of land must be evidenced in writing signed by the party to be charged,[5] the court in upholding a contract proved in any other way is acting in direct contravention to the statute. The ground, if any, for equitable interference in such cases is that the defendant should be charged, not upon the contract itself, but upon the equities resulting from its partial execution,[6] thus enforcing specific performance apart from the statute of frauds, and not in spite of it. In conformity with this reasoning several states in this country, notably Massachusetts, follow a rule seemingly superior to that laid down by the majority of jurisdictions. The case usually arises in the following way: The plaintiff enters upon the land and in reliance on the contract to convey erects improvements costing more than their intrinsic value, so that even if he were allowed a quasi-contractual action he could not recover adequate damages. In consequence of these cases, it is commonly said that part performance, in order to take the case out of the statute of frauds, must consist of a change of possession accompanied by such acts on the part of the purchaser that adequate compensation can be given him only by a conveyance of the premises.[7] From this it might appear that change of possession is necessary and that the plaintiff must always be the purchaser. But since the rule would seem to depend on the fact that unless specific performance is granted, the plaintiff will inevitably be damaged through his reliance on the defendant's representations, a proper case for its application may readily arise, where there is no change of possession and the plaintiff is the seller. An example is furnished by the facts of a late English case, where the plaintiff, in reliance on the defendant's oral promise to buy a portion of his land, built a house on it according to the latter's specifications. *Dickenson* v. *Barrow*, [1904] 2 Ch. 339. Though the case went off on another point, if the improvements made in anticipation of the sale were more expensive than valuable, it is difficult to see why specific performance should not have been granted here under the Massachusetts rule.

PURCHASE FROM THE GRANTOR OF A DEED IN ESCROW. — Delivery of the deed is necessary to pass the title to land, and escrow is a method of delivery. Under the general rule, this delivery does not avail to pass the title until the performance of the conditions or the happening of the contingency upon which the deed is held in escrow;[1] but if for any reason such as insanity, coverture, or death, the grantor becomes incapacitated from passing title before the delivery out of escrow, this second delivery is by the fiction of relation carried back to the time of the delivery into escrow so as to make the title pass as of that time.[2] Since then, in the ordinary case, it is not the grantor's deed until the second delivery, the question arises whether a subsequent grantee getting a conveyance before the performance of the conditions of the escrow would get a title indefeasible at

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[5] Stat. 29 Car. II., ch. iii. sec. iv.
[6] *Per* Selbourne, L. J., in Maddison *v.* Alderson, *supra.*
[7] Glass *v.* Hurlbert, 102 Mass. 24; Burns *v.* Daggett, 141 Mass. 368.

[1] Smith *v.* South Royalton Bank, 32 Vt. 341.
[2] Webster *v.* Kings County Trust Co., 145 N. Y. 275.